

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

BEAU MCPHAIL

PLAINTIFF

V.

NO. 4:23-CV-174-DMB-DAS

PERCY L. LYNCHARD

DEFENDANT

ORDER

On September 22, 2023, the Court ordered Beau McPhail, a minor, to show cause within fourteen days why this case should not be dismissed for his lack of capacity to sue.¹ Doc. #5. In response to the show cause order, McPhail filed a document titled “Motion Objecting to This Court’s Order Regarding Age Limitation to Sue”² in which he confirms he is “a minor child” seeking “the right to litigate ... and vindicate his federal rights.” Doc. #6 at PageID 92, 105. But because McPhail still fails to pursue his claims through a next friend, guardian, or other proper representative³ and thus still lacks capacity to sue, this case is **DISMISSED without prejudice**.

SO ORDERED, this 5th day of October, 2023.

/s/Debra M. Brown

UNITED STATES DISTRICT JUDGE

¹ McPhail’s complaint alleges that he “at all times relevant ... was a minor child subject of a child custody civil suit” who “remains a minor.” Doc. #1 at PageID 7, 22. Mississippi statute generally defines a “minor” as “any person, male or female, under twenty-one (21) years of age.” Miss. Code Ann. § 1-3-27. “Unlike standing, the lack of which cannot be waived or cured, capacity to sue can be cured.” *Lewis v. Ascension Parish Sch. Bd.*, 662 F.3d 343, 347 (5th Cir. 2011) (citing “Fed. Rule Civ. Pro. 17(c)”).

² The document was docketed as a response to the show cause order rather than as a motion. To the extent McPhail intended the document to be filed as a motion, it (including its embedded request for recusal) is denied for the same reasons stated in the Court’s show cause order.

³ McPhail advises that he “is NOT asking for an attorney to be appointed.” Doc. #6 at PageID 95.